IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

Crl.MC.No. 74 of 2007()

AGAINST THE ORDER DATED 03/01/2007 IN IN CC 561/2002 IN CMP.8149/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT-III, TRIVANDRUM

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PETITIONER: ACCUSED

RASHEED M., S/O.MYTHEEN KANNU,
AMRITHAM, KULATHOOR, KAZHAKUTTAM P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.D.AJITHKUMAR

RESPONDENTS: COMPLAINANT

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1. NAVARAJAN UNNI, MANI NIVAS,
H.NO.27, MYTHRI NAGAR, KAZHAKUTTAM,
THIRUVANANTHAPURAM.

2. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 74 OF 2007

Dated this the 10th day of January, 2007

ORDER

The petitioner is the accused in a prosecution under Sec.138 of the N.I. Act. Signature in the cheque is admitted. The short contention is that the entries were made by the complainant at his own whims and fancies. The cheque was sent to the expert. Expert's report has been obtained. The expert is a Scientific Assistant in the Forensic Science Laboratory, Trivandrum.

2. The petitioner wanted the Scientific Assistant to be examined in court. The learned Magistrate considered the said request and found the same to be one without any bona fides or merit. Accordingly, the petition was dismissed. The petitioner has come to this Court with this petition under Sec.482 of the Cr.P.C. to quash the said order passed by the learned Magistrate.

3. A revision against the impugned order is statutorily barred in law under Sec.397(2) of the Cr.P.C. That obviously is the reason why the petitioner has come to this Court with

this petition under Sec.482 of the Cr.P.C. Under law, a revision against the impugned order is barred. One should expect the petitioner to wait to challenge the order, if necessary, along with the final order to be passed in the proceedings. Of course, in an exceptional case where failure or miscarriage of justice is likely to result, this Court would be justified in invoking its powers under Sec.482 of the Cr.P.C.

4. I shall carefully avoid any detailed expression of opinion on merits. Suffice it to say that I find no reason why the petitioner should not be asked to resort to the ordinary and normal procedure of challenging the impugned order along with the final order to be passed in the proceedings, if necessary. I find no reason to invoke the extraordinary inherent jurisdiction available to this Court under Sec.482 of the Cr.P.C. to interfere with the impugned order.

5. This Crl.M.C. is, in these circumstances, dismissed; but with the observation that the petitioner's right to challenge the impugned order, if necessary, along with the final order to be

passed in the proceedings shall remain unfettered by such dismissal.

6. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

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//true copy//

P.S. to Judge